

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Hector Jesus Espinoza-Beltran,

Petitioner,

vs.

Charles Ryan, et al,

Respondents.

No. CV 11-088-TUC-FRZ

ORDER

Before the Court for consideration is the First Amended Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 filed by Petitioner Hector Jesus Espinoza-Beltran and the Report and Recommendation of the Magistrate Judge, recommending that this Court issue an Order denying Petition for Writ of Habeas Corpus.

This matter was referred to Magistrate Judge Glenda E. Edmonds pursuant to Rules 72.1 and 72.2 of the Local Rules of Civil Procedure for further proceedings and report and recommendation.

Magistrate Judge Edmonds issued her Report and Recommendation, recommending that the District Court, after its independent review of the record, enter an order dismissing the Amended Petition for Writ of Habeas Corpus as time barred.

As set forth in detail in the Report and Recommendation, the limitation period for all of Espinoza-Beltran's claims commenced on September 18, 2001, "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." 28 U.S.C. § 2244(d)(1)(A). The one-year period expired on

1 September 18, 2002. Espinoza-Beltran did not filed his federal petition for habeas relief until
2 January 28, 2011. Accordingly, Magistrate Judge Edmonds properly concluded this present
3 action is time barred.

4 The Report and Recommendation also advised that any party may serve and file
5 written objections within 14 days of being served with a copy of this report and
6 recommendation, pursuant to 28 U.S.C. §636 (b), and that, if objections are not timely filed,
7 they may be deemed waived. No objections were filed.

8 The Court finds, after consideration of the matters presented and an independent
9 review of the record herein, that the Petition should be denied as time barred and this action
10 be dismissed as recommended.

11 In the event of an appeal, the Court finds that Petitioner has failed to make the
12 requisite showing necessary to justify the issuance of a certificate of appealability. A
13 certificate of appealability may issue “only if the applicant has made a substantial showing
14 of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “[A] substantial showing of
15 the denial of a constitutional right . . . includes showing that reasonable jurists could debate
16 whether . . . the petition should have been resolved in a different manner or that the issues
17 presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*,
18 529 U.S. 473, 483-84, 120 S.Ct. 1595, 1603-04 (2000) (quoting *Barefoot v. Estelle*, 463 U.S.
19 880, 893 n.4, 103 S.Ct. 3383, 3395 n.4 (1983)). See also *Turner v. Calderon*, 281 F.3d 851,
20 865 (9th Cir. 2002). “When the district court denies a habeas petition on procedural grounds
21 without reaching the prisoner’s underlying constitutional claim, a [certificate of
22 appealability] should issue when the prisoner shows, at least, that jurists of reason would find
23 it debatable whether the petition states a valid claim of the denial of a constitutional right and
24 that jurists of reason would find it debatable whether the district court was correct in its
25 procedural ruling.” *Slack*, 529 U.S. at 484; 120 S.Ct 1604. Such has not been presented.

26 Based on the foregoing,

27 IT IS ORDERED that the Report and Recommendation (Doc. 16) is hereby
28 ACCEPTED AND ADOPTED as the findings of fact and conclusions of law;

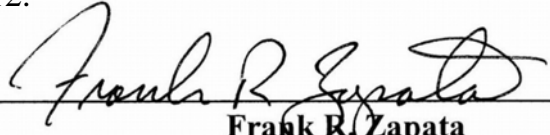
1 IT IS FURTHER ORDERED that the Amended Petitioner for Writ of Habeas Corpus
2 (Doc. 6) is DENIED;

3 IT IS FURTHER ORDERED that the Motion to Amend/Correct Answer to Petition
4 for Writ of Habeas Corpus (Doc. 14) is GRANTED;

5 IT IS FURTHER ORDERED that, in the event of an appeal, the Court finds there are
6 no issues “adequate to deserve encouragement to proceed further” and thus, no certificate of
7 appealability shall issue;

8 IT IS FURTHER ORDERED that Judgment be entered accordingly.
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10 DATED this 12th day of April, 2012.

11 
12 **Frank R. Zapata**
13 **Senior United States District Judge**
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